THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the U.S. District Court for the District of Oregon

A Court Publication Supported by the Attorney Admissions Fund

Vol. V, No. 23, October 7 , 1999

Magistrate Consents

The District Court judges have the following policy governing the use of magistrate consent forms. The forms will only be used to broaden the pool of available alternative judges. Thus, if parties assigned to an Article III judge submit magistrate consent forms, their case will stay with the Article III judge through all motion practice unless and until a trial conflict arises. If such a conflict arises, the case will be re-assigned to the first available active or senior Article III judge or a magistrate judge.

This policy is subject to one qualification-- if the Article III judge determines early on in the case that there is likely to be a trial conflict, and if the judge determines that the nature of the case is such that it makes sense for one judge to handle both the pretrial motions and the trial for purposes of continuity, then the case will be re-assigned immediately. Again, if magistrate consent forms are submitted by all parties, this simply expands the pool of potential judges who can accept the re-assignment.

Employment

Judge Redden was recently affirmed by the Ninth Circuit in a racial harassment case. The plaintiff claimed that he had been terminated in retaliation for complaining about racial harassment in the workplace. Judge Redden denied a defense motion for summary judgment based upon claim preclusion. Plaintiff had filed a wage claim in state court following his dismissal which was resolved by settlement. The court found that plaintiff's state claim differed sufficiently from his federal discrimination claims such that there was no necessary overlap.

The Ninth Circuit also upheld the jury instruction given on the hostile environment claim, finding that use of the phrase "sufficiently severe or pervasive to alter conditions of employment" adequately addressed the elements of the claim.

Finally, the court rejected the defendant's excessiveness challenge to the punitive damage award. The court found that the evidence supported the 250:1 ratio between punitive damages and plaintiff's out of pocket losses. Pavon v. Swift Transportation, No. 98-35119, slip op. 12003 (9th Cir. Sept. 20, 1999). ***Note: Copies of this opinion are not available through the newsletter office. Free copies are available through the 9th Circuit's website [www.ce9.uscourts.gov], or www.washlaw.edu**

Plaintiff's Counsel: Craig Crispin
Defense Counsel: Ed McGlone

*Note: the Ninth Circuit issued a significant decision construing the Faragher affirmative defense in Montero v. AGCO Corporation, No. 98-16806 (9th Cir. Sept. 28, 1999). The case provides a road map for employers seeking to avoid liability from discrimination claims.

7 On October 1, 1999, Judge Jelderks completed a week long jury trial in which the plaintiff claimed that she was terminated based upon her disability. The plaintiff had been employed with the defendant for 24 years and was fired during a company-wide reduction in force. However, plaintiff's supervisors had discretion over which positions should be cut and one of plaintiff's supervisors made comments indicating that she disapproved of medical leave absences. The jury found in favor of the plaintiff and awarded approximately $200,000 in actual damages and an additional $500,000 in punitive damages.
Farmer v. Aetna Life Insurance Co., CV 97-1692-JE.
Plaintiff's Counsel: Craig Crispin
Defense Counsel: Bruce Hamlin

7 In a long-standing employment dispute, Judge Ann Aiken decided that the plaintiff should be allowed to file a third amended complaint and denied a defense motion to dismiss allegations

included in plaintiff's 9th and 10th administrative charge with the EEOC. Although the dispute between the parties had been ongoing for 7 years and the federal court action pending for over 2, Judge Aiken found that it made little sense to force the plaintiff to file a separate action to address related claims. However, the court cautioned that the amendment would be the last and granted defendant an opportunity to refile a new summary judgment motion. Kaa v. Reno, CV 97-507-AA (Order, Sept. 20, 1999 - 5 pages).
Plaintiff's Counsel:
Terrance Slominski
Defense Counsel: Ron Silver

7 Judge Robert Jones denied a plaintiff's motion to amend his complaint based upon the fact that the EEO rescinded its order dismissing the plaintiff's complaint. The court held that the EEO had the authority to rescind its order under its inherent power and that the new allegations should not be added to the federal court action until after that EEO had been given a chance to fully consider it. Corpuz v. Secretary, Dept. Of Health & Human Services, CV 97-1663-JO (Order, Sept., 1999 - 6 pages).

Plaintiff's Counsel: William Goode
Defense Counsel: Ron Silver

RICO

Ten commissioned wholesale lumber traders filed an action against their former employers alleging that the defendants artificially decreased gross profits so as to reduce plaintiffs' commissions. The defendants were a parent corporation and various subsidiaries that directly employed the plaintiffs.

Judge Janice Stewart held that plaintiffs failed to state RICO claims under either 18 U.S.C. § 1962(a) or (c). The court found that plaintiffs failed to identify an "investment injury" for purposes of § 1962(a). As for the § 1962(c) claim, the plaintiffs argued that the subsidiaries constituted RICO "persons" and that the parent corporation constituted a RICO "enterprise." Judge Stewart held that the mere fact that the subsidiaries were separate legal entities and that economic benefits accrued to the parent by virtue of the subsidiaries was not enough. The court held that the plaintiffs failed to demonstrate that the "person" controlled the enterprise in some way to facilitate fraudulent conduct. Judge Stewart dismissed the RICO claims with prejudice and dismissed various state law claims without prejudice so that plaintiffs could pursue the state law claims in state court. Bodtker v. Forest City Trading Group, CV 99-533-ST (Opinion, September 9, 1999 - 17 pages).
Plaintiffs' Counsel: Gary Grenley
Defense Counsel: Lois Rosenbaum;
Carl Neil

Civil Rights

The parent of a minor who suffered neurological difficulties due to eating lead based paint in a home rented under Section 8 filed an action against the landlord and the Housing Authority of Portland (HAP) for violations of 42 U.S.C. § 1983, Oregon's Landlord tenant laws and negligence.

Judge Ann Aiken denied HAP's motion for summary judgment against the civil rights claim. The court rejected a federal regulation which would preclude a claim for damages, finding that the agency was not authorized to promulgate regulations insulating housing authorities from liability. However, the court granted an alternative partial summary judgment motion rejecting plaintiff's allegations that HAP had any duty to abate lead-based paint hazards or any duty to relocate plaintiff after the hazard was discovered. The court also granted HAP's motion to amend its answer and to file a third party complaint asserting gross negligence against the parents. Harris v. Housing Authority of Portland, CV 98-1505-AA (Opinion, Oct., 1999).

Plaintiff's Counsel: David Sugerman
Defense Counsel: Miles Sweeney

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